

EXHIBIT 77



Transcript of the Deposition of
Toni Giancola

Case: James Fletcher Jr. v. Jerome Bogucki, et al.

Taken On: September 19, 2024

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UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF ILLINOIS EASTERN DIVISION

JAMES FLETCHER, JR.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 20 CV 4768
)	
JEROME BOGUCKI, ANTHONY)	Hon. Andrea R. Wood
NORADIN, RAYMOND SCHALK,)	
ANTHONY WOJCIK, UNKNOWN)	
CITY OF CHICAGO POLICE)	
OFFICERS, and the CITY)	
OF CHICAGO,)	
)	
Defendants.)	

The deposition of TONI GIANCOLA, taken via videoconference in the above-entitled cause, called as a witness by the Defendants herein, pursuant to the provisions of the Code of Civil Procedure of the State of Illinois and the Rules of the Supreme Court thereof pertaining to the taking of depositions for the purpose of discovery, before SHARON L. PATANELLA, C.S.R., License No. 84-002169, at 10:03 a.m. on September 19, 2024.

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24 on behalf of the witness.

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I N D E X

Witness: Page

TONI GIANCOLA

Examination by:

MS. WEST 4

MR. STARR 60

MR. MICHALIK 93

MR. STARR (further) 94

E X H I B I T S

Number Marked for Identification

1 22

2 30

3 50

4 82

(Exhibit 4 retained by attorneys.)

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1 (Whereupon, the witness was
2 duly sworn.)

3 WHEREUPON,

4 TONI GIANCOLA,
5 a witness, called for examination, after having
6 been duly sworn or affirmed, was examined and
7 testified via videoconference as follows:

8 EXAMINATION

9 BY MS. WEST:

10 Q. Ms. Giancola, say your name to make sure
11 there's no echo.

12 A. Toni Giancola.

13 Q. Can you spell your last name for the
14 record, please?

15 A. G, as in girl, I-A-N-C-O-L-A.

16 Q. Ms. Giancola, am I saying that correctly?

17 A. Giancola.

18 MS. WEST: I apologize.

19 Let the record reflect this is the
20 deposition of Toni Giancola, taken pursuant to
21 notice in accordance with the Federal Rules of
22 Civil Procedure, and pursuant to Judge Wood's court
23 order that was entered in this matter.

24 My name is Allyson West. I represent

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1 several of the defendant officers that are being
2 sued by Mr. James Fletcher in a civil case.

3 BY MS. WEST:

4 **Q. Have you ever taken part in a deposition**
5 **before?**

6 A. Yes.

7 MR. OBERTS: Just for the record, Bill
8 Oberts on behalf of the deponent.

9 MS. WEST: Do we want to put appearances
10 on the record?

11 MR. MICHALIK: Yes.

12 MR. STARR: Sure.

13 MS. WEST: All right. Go ahead.

14 MR. FANGMAN: Assistant State's Attorney
15 Paul Fangman on behalf of Cook County.

16 MS. WEST: Allyson West on behalf of the
17 Defendant Officers.

18 MR. MICHALIK: Paul Michalik on behalf of
19 Defendant City of Chicago.

20 MR. STARR: Sean Starr on behalf of
21 Plaintiff, James Fletcher.

22 BY MS. WEST:

23 **Q. Now that we've got appearances on file,**
24 **you indicated that you have been deposed before;**

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1 correct?

2 A. Yes.

3 Q. How many times have you been deposed?

4 A. Approximately three or four times.

5 Q. I won't bore you with all the ground
6 rules, but if at any point you need to take a
7 break, just let me know and you can take that break
8 . All I ask is that you answer the question that's
9 pending before you take that break.

10 Understood?

11 A. Yes.

12 Q. Where are you currently located today?

13 A. At the Bridgeview courthouse.

14 Q. And is there anyone else in the room with
15 you?

16 A. My attorney, Bill Oberts. Other than
17 that, no.

18 Q. And do you have anything else up on the
19 computer screen in front of you?

20 A. No.

21 Q. Just the Zoom platform; is that correct?

22 A. Correct.

23 Q. Do you have any documents in front of you?

24 A. No.

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1 **Q. Did you review any documents to prepare**
2 **for your deposition today?**

3 A. I reviewed -- I scanned the case file that
4 was sent by my attorney.

5 **Q. And when did you do that?**

6 A. Approximately, I believe, a week ago or so.

7 **Q. And when you say the "case file," what**
8 **does the case file consist of?**

9 A. The documents from the state's attorney's
10 file I believe that was produced in this case.

11 **Q. And the documents that you call the case**
12 **file, did it include documents relative to the**
13 **conviction integrity unit?**

14 A. I scanned them quickly only for the
15 purpose of determining to see if my recollection
16 could be refreshed in terms of what I reviewed for
17 my involvement in the case, so I do not know.

18 **Q. Fair enough.**

19 **The documents or the case file that you**
20 **reviewed, was it hundreds of pages?**

21 A. I believe so, yes.

22 **Q. Did you review any documents in**
23 **preparation for your deposition today?**

24 A. Outside of the case file, no. I mean, I

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1 saw Rebecca Pallmeyer's decision. I don't know if
2 that was in the actual case file. But other than
3 that document, all the documents I reviewed were
4 from the case file.

5 **Q. Okay. And when you say Judge Pallmeyer's**
6 **decision, was that her court order relative to the**
7 **habeas petition?**

8 A. Yes.

9 **Q. When did you review that document?**

10 A. That was sent to me by my attorney, like I
11 said, I believe a week ago. It could have been
12 more or less.

13 **Q. When you reviewed the case file in**
14 **preparation for your deposition today, did you see**
15 **any documents that you authored?**

16 A. Yes.

17 **Q. Okay. How many documents among the case**
18 **file did you see that you authored specifically?**

19 A. I saw a memo, and to my recollection, I
20 saw my name on an investigator request, I believe
21 it was. And there might have been an email as well
22 with my name on it. That's the extent of what I
23 believe was pertinent to me.

24 **Q. As part of the case file that you**

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1 **reviewed, did it include any police reports?**

2 A. Yes, there were police reports.

3 **Q. The case file that you reviewed, did it**
4 **include any criminal trial transcripts related to**
5 **Mr. Fletcher's underlying criminal case?**

6 A. Yes.

7 **Q. Other than your attorney, did you speak**
8 **with anyone in preparation for your deposition?**

9 A. To prepare, no. I let my partners know I
10 was taking a deposition, but no.

11 **Q. And you're a licensed attorney; correct?**

12 A. Yes.

13 **Q. When were you first licensed?**

14 A. 2005.

15 **Q. Are you licensed in the State of Illinois?**

16 A. Yes.

17 **Q. Are you licensed in any other states?**

18 A. No.

19 **Q. Where are you currently employed?**

20 A. At the Cook County State's Attorney's
21 Office.

22 **Q. And how long have you been employed with**
23 **the office?**

24 A. Since 2005, approximately 19 years.

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1 **Q. Have you held any other job other than**
2 **your employment with the state's attorney's office**
3 **since becoming a licensed attorney?**

4 A. No.

5 **Q. Can you just briefly walk me through your**
6 **assignments in the office?**

7 A. I started out in appeals. Then I went to
8 Markham misdemeanors. From there, I did
9 preliminary hearings. I went to felony review. I
10 did city preliminary hearings. I did Branch 66. I
11 did felony review. And then I worked my way
12 through the felony trial division and also went
13 back to felony review as what we call a trial
14 supervisor and held a supervisory role in felony
15 review, and then here at the Bridgeview courthouse.

16 **Q. And what's your current position with the**
17 **office?**

18 A. I'm the supervisor of the 5th Municipal
19 District, which is Bridgeview.

20 **Q. And how long have you held that position?**

21 A. Approximately two years.

22 **Q. What are your current responsibilities**
23 **with that position?**

24 A. At Bridgeview, we house anything from

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1 petty to misdemeanors to felony courtrooms. And so
2 I supervise all of those cases that come out of the
3 Bridgeview courthouse and the ASAs contained here.

4 **Q. Approximately how many ASAs are assigned**
5 **to the Bridgeview courthouse?**

6 A. Anywhere between I would say 20 to 30,
7 depending on staffing.

8 **Q. And prior to becoming a supervisor of the**
9 **5th District, what was your title or position with**
10 **the office?**

11 A. I was the deputy supervisor here.

12 **Q. And how long did you hold that position?**

13 A. Approximately a year and a half.

14 **Q. So what was your position in the office in**
15 **January of 2020?**

16 A. I was a deputy supervisor in felony review.

17 **Q. As of January 2020, how long had you held**
18 **that position as deputy supervisor of felony review?**

19 A. I believe I became a supervisor in felony
20 review in -- I want to say maybe May of 2019.

21 **Q. Prior to becoming the deputy supervisor of**
22 **felony review in 2019, what position did you hold?**

23 A. I was on felony review as a trial supervisor.

24 **Q. Can you explain to me what that means,**

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1 **being a trial supervisor within felony review?**

2 A. You're just a felony assistant, either a
3 first or a second chair, and you help out the
4 younger ASAs, what we call the line ASAs on their
5 cases, and you are responsible as a trial
6 supervisor mostly for handling larger-type cases,
7 like murders.

8 **Q. And were you actually -- as a trial**
9 **supervisor, were you actually trying any of the**
10 **felony murders?**

11 A. I mean, not while I was on felony review,
12 but as a first chair, as a second chair, as a third
13 chair during the course of my office and still now
14 I still try murders.

15 **Q. How many times have you been in felony**
16 **review?**

17 A. I would have gone as a second chair. I
18 would have gone as a first chair. And then when I
19 was a first chair -- I would gone as a line ASA, so
20 let me correct that. So approximately three separate
21 times.

22 **Q. Okay. In January of 2020, when you were**
23 **deputy supervisor for the felony review division,**
24 **what were your duties and responsibilities?**

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1 A. As a deputy supervisor?

2 **Q. Correct.**

3 A. I supervised all the individuals on felony
4 review and assisted on larger cases and conducted
5 training and, you know, assisted mostly generally
6 on murders.

7 **Q. When you say assisted on murders, what**
8 **does that mean? How would you assist?**

9 A. Well, we have to review grand jury
10 transcripts. We have to do scheduling to bring in
11 witnesses and those type things. So that's what I
12 mean by assist.

13 **Q. As a deputy supervisor in felony review,**
14 **would you consult with the younger or the line ASAs**
15 **regarding approval of criminal charges?**

16 A. Not on a run-of-the-mill.

17 MR. OBERTS: Objection, vague.

18 Line ASAs within felony review, correct?

19 MS. WEST: Correct.

20 THE WITNESS: If terms of would I
21 personally consult with them, I mean, I'm sure I
22 gave advice. I'm sure I helped supervise them, but
23 that's what the trial supervisors are there for.
24 They're more hands-on with the line ASAs.

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1 BY MS. WEST:

2 Q. Understood.

3 In January of 2020, as the deputy
4 supervisor of felony review, would you review
5 convictions that were vacated in order to make a
6 determination on whether or not to retry that
7 person?

8 A. No.

9 Q. That wasn't something that you did as a
10 deputy supervisor in felony review?

11 MR. OBERTS: Asked and answered and form.

12 Go ahead.

13 THE WITNESS: I did it on this case, but
14 that was not an everyday duty of a deputy supervisor
15 on review.

16 BY MS. WEST:

17 Q. Okay. And that's where I was going.

18 So in January of 2020, was there a
19 division, if you know, within the state's
20 attorney's office that typically reviewed cases
21 where the conviction had been vacated and the
22 office was looking to looking to make a
23 determination whether or not to retry?

24 A. I do not know.

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1 **Q. Who assigned you Mr. Fletcher's case for**
2 **review?**

3 A. Risa Lanier.

4 **Q. Do you have any idea why as the deputy**
5 **supervisor of felony review you were assigned to**
6 **review Mr. Fletcher's case?**

7 MR. FANGMAN: Objection, deliberative
8 process.

9 MR. OBERTS: Object to speculation and
10 foundation.

11 MR. FANGMAN: I will ask Ms. Giancola not
12 to answer.

13 BY MS. WEST:

14 **Q. Ms. Giancola, are you going to take the**
15 **advice of Mr. Fangman and refuse to answer?**

16 A. Yes.

17 **Q. To be clear, you didn't have any**
18 **involvement in the underlying criminal prosecution**
19 **of James Fletcher; correct?**

20 MR. STARR: Allyson, there was a glitch on
21 my end. I didn't hear the whole question. Would
22 you mind asking it again?

23 MS. WEST: Sure.

24

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1 BY MS. WEST:

2 Q. To be clear, you didn't have any
3 involvement in the underlying criminal prosecution
4 of Mr. Fletcher; correct?

5 MR. OBERTS: Objection, form.

6 Go ahead.

7 THE WITNESS: No.

8 MR. OBERTS: You did not?

9 THE WITNESS: I did not. No, I did not.

10 BY MS. WEST:

11 Q. All right. In 2020 -- in January of 2020,
12 are you aware if the state's attorney's office had
13 a policy that guided the review of cases such as
14 Mr. Fletcher's when you were looking to make a
15 determination whether or not to retry?

16 MR. FANGMAN: Objection, deliberative
17 process. I will direct Ms. Giancola not to answer.

18 MR. OBERTS: And I would just object based
19 on speculation and foundation, and to the extent it
20 seeks an opinion and/or answer from this witness as
21 a Rule 30(b)(6) witness as she is not designated as
22 a Rule 30(b)(6) witness for any specific policy,
23 practice, procedure, what have you.

24 But with counsel's deliberative process

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1 objection, those were just my objections for the
2 record.

3 BY MS. WEST:

4 **Q. Okay. Mr. Giancola, are you going to take**
5 **the advice of counsel and not answer that question?**

6 A. Yes.

7 **Q. Okay. Let me ask it this way.**

8 MS. WEST: And, Paul, if we need to, we
9 can --

10 MR. OBERTS: I'd like to clarify.

11 I don't know if it would be advice of
12 counsel, but the office is asserting a deliberate
13 process objection.

14 And just to clarify for the record, just
15 to be clear, I represent the deponent.

16 MS. WEST: Sure. I will specify.

17 Let me just ask it this way because I
18 think we may be quibbling over the order here from
19 Judge Wood.

20 BY MS. WEST:

21 **Q. Were there procedures that were followed**
22 **when you reviewed Mr. Fletcher's case?**

23 A. I can only speak to what I did personally
24 on this case.

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1 **Q. Did you follow procedures that the state's**
2 **attorney's office had in place in January of 2020?**

3 MR. OBERTS: Objection, vague, foundation,
4 speculation, and to the extent that it calls for a
5 Rule 30(b)(6) type of opinion, but go ahead.

6 THE WITNESS: I'm not aware of any
7 procedures. This the one and only time to my
8 knowledge that I have reviewed a case like this,
9 so I can't answer that question.

10 MR. OBERTS: Allyson, I'm very sorry. You
11 just started at 10:03, but if we can take a break
12 maybe within five minutes or something. It doesn't
13 have to be right now. I don't want to break your
14 flow.

15 MS. WEST: No, that's okay. Let's do
16 it right now because I was actually going to
17 transition.

18 MR. FANGMAN: How long?

19 THE WITNESS: Ten minutes.

20 MR. OBERTS: Thank you.

21 (Recess taken.)

22 BY MS. WEST:

23 **Q. Okay. Just to be clear, we talked about**
24 **this a little bit before the break. You didn't**

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1 **follow any formal procedure of the state's**
2 **attorney's office in your review of Mr. Fletcher's**
3 **case; is that right?**

4 MR. OBERTS: Object to foundation to the
5 extent asked and answered, and to the extent it
6 seeks a Rule 30(b)(6) type of opinion with regard
7 to policy, practice, and procedure.

8 But with that, you can answer.

9 THE WITNESS: This is the one and only
10 time that I've done this, so I'm unaware of the
11 policies and procedures. I can't speak to that.

12 BY MS. WEST:

13 **Q. Let me ask you this.**

14 **Would you agree that the decision to nolle**
15 **a case is a matter of prosecutorial discretion?**

16 MR. FANGMAN: Objection, deliberative
17 process.

18 THE WITNESS: I mean --

19 MR. FANGMAN: I will ask Ms. Giancola not
20 to answer.

21 THE WITNESS: I will follow his advice.

22 BY MS. WEST:

23 **Q. Okay. So let's do it this way.**

24 **So you when -- strike that.**

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1 **Do you have an independent recollection of**
2 **being assigned to review Mr. Fletcher's criminal**
3 **case?**

4 A. I do remember being assigned to it.

5 **Q. Okay. Do you have any idea when you first**
6 **became involved?**

7 A. No.

8 **Q. Did the review of that case file and the**
9 **notes relative to yourself help refresh your memory**
10 **at all as to when you first became involved in the**
11 **review of Mr. Fletcher's case?**

12 A. No. I mean, I know it was at the end of
13 the year. The reason I don't know is because I
14 don't know the date. It was at the end of the
15 year.

16 **Q. And generally what is your independent**
17 **recollection of being assigned Mr. Fletcher's case?**

18 MR. OBERTS: Objection, vague, overbroad.

19 Go ahead.

20 THE WITNESS: I remember being assigned
21 the case, and that's pretty much the extent of my
22 independent recollection.

23 BY MS. WEST:

24 **Q. Do you have an independent recollection of**

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1 **conducting an investigation into Mr. Fletcher's**
2 **case?**

3 MR. OBERTS: Objection, assumes facts not
4 in evidence with regards to quote/unquote
5 investigation and to the extent it's also contrary
6 to her testimony regarding her review.

7 With that, go ahead.

8 THE WITNESS: I did no investigation.

9 BY MS. WEST:

10 **Q. All right. I'm sorry. I think you**
11 **previously told me, but who assigned you to review**
12 **Mr. Fletcher's case?**

13 A. Risa Lanier.

14 **Q. What was Ms. Lanier's position within the**
15 **office at the time that you received the assignment**
16 **from her?**

17 A. She would have been the head of the
18 criminal division.

19 **Q. And were you tasked with reviewing**
20 **Mr. Fletcher's case in order to make a**
21 **determination whether or not to retry his criminal**
22 **case?**

23 MR. OBERTS: Speculation, foundation.

24 Go ahead.

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1 THE WITNESS: I was tasked with giving a
2 recommendation.

3 BY MS. WEST:

4 Q. I'm going to show you what we'll mark as
5 Exhibit 1.

6 Bear with me. I'm going to screen share
7 with you.

8 (Exhibit 1 marked for
9 identification.)

10 BY MS. WEST:

11 Q. Okay. Is there a document up on your
12 screen?

13 A. Yes.

14 Q. Okay. For the record, this is Individual
15 Defendants 1812.

16 Was this a document that you reviewed in
17 preparation for your deposition today?

18 A. Yes.

19 Q. Okay. And what is this document?

20 A. It's entitled Investigator Request at the
21 top.

22 Q. And is it an email correspondence that you
23 yourself sent?

24 A. I don't have an independent recollection

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1 of sending it, but it does have my name on it, and
2 I have no reason to doubt that it was sent by me.

3 **Q. Okay. And it looks like the recipient**
4 **was Margaret Bamford; do you see that?**

5 A. I do.

6 **Q. Who is Margaret Bamford?**

7 A. She's in investigations. She was. I
8 believe she might be gone from the office.

9 **Q. Okay. Do you have an independent**
10 **recollection aside from reading this document why**
11 **you were reaching out to Margaret Bamford regarding**
12 **Mr. Fletcher's case?**

13 A. I don't have an independent recollection,
14 but it is typical to reach out to let the victim's
15 family know, next of kin, what's going on with the
16 case in terms of procedural history, et cetera. So
17 it's not unusual.

18 **Q. In this email, the first sentence, "I was**
19 **unable to figure out how to put in an investigator**
20 **request to assist in this matter, but I will gladly**
21 **do so if you will let me know who to put it under."**

22 **Do you see that?**

23 A. Yes.

24 **Q. Do you have an independent recollection of**

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1 **what type of request you were attempting to make?**

2 A. From that email, it's to locate the
3 family, to find out if anyone is living, and to get
4 contact information.

5 **Q. And when you referred to an investigator**
6 **request, are you talking about an investigator**
7 **request form that you fill out to have an**
8 **investigator go out and, for example, locate a**
9 **witness?**

10 MR. OBERTS: Objection, vague, form,
11 speculation, and foundation.

12 Go ahead.

13 THE WITNESS: An investigator request is a
14 means by asking the investigations unit to do
15 something.

16 BY MS. WEST:

17 **Q. And is that a paper form that you fill out**
18 **or an electronic form that you fill out?**

19 A. It could be both.

20 **Q. Why were you reaching out to Ms. Bamford?**

21 MR. FANGMAN: Objection, calls for
22 deliberative process privilege. I'm directing
23 Ms. Giancola not to answer.

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1 BY MS. WEST:

2 Q. Ms. Giancola, are you going to take the
3 advice of Mr. Fangman and refuse to answer?

4 MR. OBERTS: Also, work product.

5 Go ahead.

6 THE WITNESS: I will follow Mr. Fangman's
7 advice.

8 BY MS. WEST:

9 Q. Thank you.

10 Were you aware that Ms. Bamford was a
11 previously assigned investigator on Mr. Fletcher's
12 case?

13 MR. OBERTS: Object to the fact it assumes
14 facts not in evidence, but go ahead.

15 THE WITNESS: No.

16 MR. STARR: Joining objection to foundation.

17 BY MS. WEST:

18 Q. Down a few lines in the email, the fifth
19 line down where it starts with "We are at the
20 point," do you see that?

21 A. Yes.

22 Q. Okay. It says, "We are at the point now
23 of trying to meet/notify the family."

24 Do you see that sentence?

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1 A. Yes.

2 Q. Based on that statement, does it help you
3 pinpoint when you first became involved with
4 Mr. Fletcher's case?

5 A. No.

6 Q. Okay. The email that we're looking at now
7 is dated January 9, 2020; correct?

8 A. Yes.

9 Q. And that sentence that says, "We are at
10 the point now of trying meet/notify the family,"
11 does that indicate to you that you had been
12 assigned Mr. Fletcher's case prior to January 9,
13 2020?

14 MR. OBERTS: Objection, speculation,
15 foundation.

16 THE WITNESS: Like I said prior, I do
17 remember getting it towards the end of 2019. Where
18 exactly I'm at at this point, I do not know.

19 BY MS. WEST:

20 Q. And that was my next question.

21 At this point in January of 2020, do you
22 have an independent recollection of what, if
23 anything, you had done by way of review of
24 Mr. Fletcher's case?

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1 A. The steps I took were to review the file.
2 I generated a memo, and I do remember that it was
3 the beginning of the year that I finished. What
4 date or anything I do not know.

5 **Q. At what point -- strike that.**

6 **Is there a particular point in your review**
7 **of the case that you are to notify the family or**
8 **the victim's family of what's going on?**

9 MR. FANGMAN: Objection, calls for
10 deliberative process privilege, and I'm directing
11 Ms. Giancola not to answer the question.

12 MR. OBERTS: Speculation and foundation.
13 Go ahead.

14 THE WITNESS: I will follow Mr. Fangman's
15 advice.

16 BY MS. WEST:

17 **Q. Do you have a recollection of speaking to**
18 **anyone that was a family member of Mr. Sorrell?**

19 A. I do not have an independent recollection
20 of meeting with anyone family-wise.

21 **Q. Can you tell based on your review of the**
22 **case file prior to your deposition today whether**
23 **anyone from the victim's family was ever notified?**

24 A. Not from the documents I reviewed.

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1 Q. Do you have an independent recollection of
2 anyone telling you they ever spoke with a family
3 member of Mr. Sorrell's to inform them that the
4 office was reviewing Mr. Fletcher's case?

5 A. No.

6 Q. There is a handwritten note in the middle
7 of this page here. It says, "Hope this helps.
8 Gerry Carroll, Dan Brannigan. PS - still need the
9 request." And I don't know if the last word there
10 is Gerry or not.

11 Do you have any idea what the last word is
12 there?

13 MR. OBERTS: Objection, foundation.

14 MR. STARR: Join.

15 THE WITNESS: No.

16 BY MS. WEST:

17 Q. Do you have any idea whose handwriting
18 this is?

19 A. No.

20 Q. So it's safe to say it's not your
21 handwriting; correct?

22 A. Correct.

23 Q. Do you have a recollection of speaking
24 with Gerry Carroll relative to Mr. Fletcher's case?

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1 A. I don't know who Gerry Carroll is.

2 **Q. Do you know who Dan Brannigan is?**

3 A. No.

4 **Q. So it's safe to say since you don't know**
5 **who Dan Brannigan is, you didn't speak with him**
6 **relative to Mr. Fletcher's case?**

7 MR. STARR: Objection, form and foundation.

8 THE WITNESS: I do not have a recollection
9 of speaking to them because I don't know who they
10 are.

11 BY MS. WEST:

12 **Q. Do you know if Ms. Bamford ever responded**
13 **to this email?**

14 A. I don't know. I have no independent
15 recollection, and I don't know.

16 **Q. Do you have an independent recollection of**
17 **receiving information for family members of**
18 **Mr. Sorrell?**

19 MR. OBERTS: Objection, vague.

20 Go ahead.

21 THE WITNESS: What do you mean by
22 "information"?

23 BY MS. WEST:

24 **Q. Contact information.**

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1 A. Do I remember receiving contact information?

2 Q. Correct.

3 A. I do not have an independent recollection
4 of receiving that information.

5 Q. Based on your review of the documentation
6 prior to today's deposition, are you aware if you
7 were ever provided with contact information for the
8 family members of Willie Sorrell?

9 A. I saw an investigator request that appeared
10 to me to be potentially contact information, but I
11 do not have a personal recollection if I was the
12 one that received it or was reviewing it.

13 Q. Did you work with anyone else to review
14 Mr. Fletcher's case?

15 A. No.

16 Q. All right. Let me show you what we will
17 mark as Exhibit 2.

18 (Exhibit 2 marked for
19 identification.)

20 BY MS. WEST:

21 Q. Do you see a document on your screen?

22 A. Yes.

23 Q. Okay. Are you familiar with this
24 document?

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1 A. I don't have an independent recollection,
2 but it appears to be an investigation request form
3 that does have my name on it.

4 **Q. Okay. And where it says ASA/REQUESTER,**
5 **your name is next to that; correct?**

6 A. Correct.

7 **Q. And the date on this investigation request**
8 **form is January 9, 2020, at 1:02 p.m.**

9 **Do you agree?**

10 A. Yes, that's what it states on the
11 document.

12 MR. OBERTS: Can you state what the Bates
13 stamp is on the bottom?

14 MS. WEST: Sure. For the record, it's
15 Individual Defendants 1741 through 1742.

16 MR. OBERTS: Thank you.

17 BY MS. WEST:

18 **Q. Is this a document that would have been**
19 **submitted electronically?**

20 MR. OBERTS: Objection, speculation,
21 foundation.

22 THE WITNESS: It's submitted in a computer
23 system that is done electronically.

24

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1 BY MS. WEST:

2 Q. And there's also a paper form that you can
3 fill out for an investigator request; is that
4 right?

5 MR. OBERTS: Objection, form.

6 THE WITNESS: Yes. It's a carbon-type
7 paper.

8 BY MS. WEST:

9 Q. At the bottom of this document, it says,
10 "Assigned To Investigations, Complex Prosecutions."

11 Do you see that?

12 A. Yes.

13 Q. Is that where all requests go for this
14 type of investigator request?

15 MR. OBERTS: Objection, speculation,
16 foundation.

17 THE WITNESS: I'm not the one that fills
18 that portion out, so I don't know how that gets
19 generated.

20 BY MS. WEST:

21 Q. Do you see on the bottom where in blue
22 ink -- strike that.

23 It says date completed at the bottom, and
24 in blue ink next to it it says 1/10/2020.

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1 **Do you see that?**

2 A. I do.

3 **Q. And it looks like there's initials below**
4 **it. Do you see that?**

5 A. Yes, I see what you're referencing.

6 **Q. Okay. Are either of those in your**
7 **handwriting?**

8 A. No.

9 **Q. Do you know whose handwriting that is?**

10 A. No.

11 **Q. Okay. Does that indicate to you that this**
12 **assignment was completed on January 10, 2020?**

13 MR. OBERTS: Objection, speculation,
14 foundation.

15 THE WITNESS: Based on the fact that I'm
16 not the one that generated that, I can't answer
17 that.

18 BY MS. WEST:

19 **Q. At the bottom here, the last sentence,**
20 **"Risa asked that I work with you guys and victim**
21 **witness to locate any living relatives ASAP."**

22 **Do you see that?**

23 A. Yes.

24 **Q. Do you have a recollection of being**

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1 **directed specifically to a particular unit to help**
2 **locate relatives of Mr. Sorrell?**

3 MR. OBERTS: Objection, foundation.

4 THE WITNESS: What do you mean by
5 "directed"?

6 BY MS. WEST:

7 **Q. Do you have an independent recollection of**
8 **Risa telling you who to go to, what division within**
9 **the state's attorney's office to go to to help**
10 **locate living relatives?**

11 A. No, i don't have an independent
12 recollection of being given a directive, but that's
13 two units that always help us locate victims -- our
14 victim witness unit and our investigations.

15 **Q. As of January 2020, do you have an**
16 **independent recollection as to whether you had made**
17 **a determination or recommendation to retry**
18 **Mr. Fletcher?**

19 MR. OBERTS: Objection, speculation,
20 foundation to the extent asked and answered.

21 Go ahead.

22 THE WITNESS: I made a recommendation. As
23 to the date, I know it is was in the beginning,
24 towards the beginning of January, but I don't know

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1 a specific date.

2 BY MS. WEST:

3 Q. Prior to you making your recommendation,
4 are you aware if any other ASA had given a
5 recommendation relative to Mr. Fletcher's retrial?

6 A. To my knowledge, I do not know. I only
7 know what I worked on, and I worked on it alone.

8 Q. Did you -- and I don't want to know about
9 the conversations, but did you have any
10 conversations with Risa prior to being assigned --
11 strike that.

12 Did you have any conversations with Risa
13 after being assigned to review Mr. Fletcher's case
14 about the substance of the underlying criminal
15 case?

16 A. What do you mean "substance"?

17 Q. Did you have any conversations with Risa
18 about the underlying facts of the criminal case
19 once you received the assignment?

20 MR. OBERTS: Objection, vague, but go
21 ahead.

22 THE WITNESS: I received the assignment.
23 I have no idea what her involvement was, if she
24 even knew the facts of the case. I received the

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1 assignment from her and the details, like I said, I
2 worked alone. So I don't have an independent
3 recollection of speaking to anyone really regarding
4 this case.

5 BY MS. WEST:

6 **Q. When you conducted your review of**
7 **Mr. Fletcher's case, did you speak with the ASAs**
8 **that prosecuted Mr. Fletcher?**

9 MR. OBERTS: Object to foundation.

10 Go ahead.

11 THE WITNESS: No.

12 BY MS. WEST:

13 **Q. When you conducted your review of**
14 **Mr. Fletcher's case, did you speak with the felony**
15 **review assistant state's attorney who approved**
16 **charges?**

17 MR. OBERTS: Objection, foundation.

18 THE WITNESS: To my knowledge, no. I
19 reviewed the documents in the file.

20 BY MS. WEST:

21 **Q. Let's talk about that.**
22 **What specifically did you review relative**
23 **to Mr. Fletcher's case?**

24 MR. OBERTS: Objection, foundation.

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1 THE WITNESS: I don't have an independent
2 recollection of the specific documents that I
3 reviewed, but I would have reviewed in general
4 trial transcripts, witness statements, grand jury,
5 any case opinions, like legal opinions or to learn
6 the procedural history of where we were at in the
7 case. If the felony review had statement
8 summaries, I would have reviewed things like that.
9 If there were affidavits in there from any
10 witnesses, those were the types -- GPR reports --
11 those are the types of things I would have reviewed
12 in my case review.

13 BY MS. WEST:

14 Q. Okay. Would you have reviewed the
15 underlying police reports relative to the
16 investigation?

17 MR. OBERTS: Objection, speculation,
18 foundation.

19 THE WITNESS: I would have reviewed
20 reports that were contained in the file pertinent
21 to this case if they were in the file, yes.

22 BY MS. WEST:

23 Q. Would you have made any independent
24 requests or issued any subpoenas for documents from

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1 **the police department?**

2 A. No.

3 **Q. Would you have reviewed post-conviction**
4 **proceeding transcripts or motions?**

5 MR. OBERTS: Objection, speculation,
6 foundation.

7 THE WITNESS: I do not have an independent
8 recollection of reviewing post-conviction matters.

9 BY MS. WEST:

10 **Q. Did you review documents relative to**
11 **Mr. Fletcher's case that were generated by the**
12 **conviction integrity unit?**

13 MR. OBERTS: Objection, speculation,
14 foundation.

15 THE WITNESS: To my knowledge, I don't
16 have an independent recollection of reviewing
17 specific documents.

18 BY MS. WEST:

19 **Q. And are you aware that the conviction**
20 **integrity unit looked at Mr. Fletcher's case more**
21 **than one time prior to his conviction being vacated?**

22 MR. FANGMAN: Objection, calls for
23 deliberative process privilege, and I will be
24 directing Ms. Giancola not to answer.

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1 MR. OBERTS: I just object to vague and
2 time frame and/or scope.

3 But based on Mr. Fangman's objection --

4 THE WITNESS: I will follow his advice.

5 MS. WEST: All right. Let's talk about
6 that one because I'm not asking her about any
7 conversations -- maybe I'll clarify it that way.
8 Let's try it this way.

9 BY MS. WEST:

10 Q. Did you review any documents that made you
11 aware that the conviction integrity unit looked at
12 Mr. Fletcher's case more than one time prior to his
13 conviction being vacated?

14 MR. FANGMAN: Objection, calls for
15 deliberative process privilege.

16 MR. OBERTS: I'd also object to it's vague
17 and time frame or scope.

18 MS. WEST: Paul, I don't agree. Can you
19 elaborate why you think deliberative process applies?

20 MR. FANGMAN: I'm just literally reading
21 from Judge Wood's direction to the parties in this
22 case. It says such topics may include what
23 procedures were followed, who was involved in the
24 decisions, what documents were reviewed.

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1 So Ms. Giancola can reveal what documents
2 she reviewed, but not her opinion about those
3 documents and where they came from.

4 If you have a specific question about the
5 documents she reviewed, you can ask her what
6 documents she reviewed, not her interpretation or
7 her opinions about where the documents came from.

8 MS. WEST: My original question was,
9 are you aware that the conviction integrity unit
10 reviewed Mr. Fletcher's case more than once?
11 That's a yes-or-no answer.

12 MR. FANGMAN: But that's not a question
13 about which documents she reviewed.

14 MS. WEST: Right.

15 MR. FANGMAN: I'm just looking at the
16 order.

17 MS. WEST: I understand what you're
18 saying, but I don't see how deliberative process
19 applies to that. I understand it's not specified
20 in Judge Wood's order, but I also don't see how
21 deliberative process is a privilege that would
22 apply.

23 MR. FANGMAN: I believe that Ms. Giancola
24 has testified about what task she was given, and I

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1 think that in the context of the task she was
2 given, which you were asking her questions about,
3 that question is targeted to lead to deliberative
4 process.

5 MS. WEST: I understand what you're
6 saying, Paul, for the record, but just for the
7 record I'm going to say that I don't think Judge
8 Wood's order is limiting us from asking whether or
9 not Ms. Giancola is aware of whether the conviction
10 integrity unit reviewed Mr. Fletcher's case.
11 Specifically she testified earlier that she
12 reviewed the documents to see whether it would
13 refresh her memory as to whether or not the
14 conviction integrity unit had documents included in
15 there.

16 So I don't think based on Judge Wood's
17 order alone we are limited in not asking a question
18 like this. Sure, she sets out topic areas that we
19 may ask and things that we may not ask on, but I
20 think this is a fact and not a mental impression
21 that would invade on the deliberative process
22 privilege.

23 MR. OBERTS: I would just state that the
24 testimony thus far is that she reviewed documents

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1 in preparation for her deposition to try to refresh
2 her recollection as to what she might have
3 reviewed. I don't think she ever testified that
4 she reviewed documents specifically to determine
5 whether the conviction integrity unit or any other
6 specific unit was involved. I'm just noting that.

7 MR. MICHALIK: I would just add for the
8 record that according to Judge Wood's order, topics
9 may include whether any investigation was
10 conducted, and I think Ms. West's question directly
11 flows from that. So I think it is allowed under
12 Judge Wood's order.

13 MR. OBERTS: I would just state that she
14 testified that she did not conduct any investigation,
15 just noting that.

16 MR. MICHALIK: Understood, but I'm just
17 saying that it says whether any investigation was
18 conducted. It doesn't say whether any investigation
19 was conducted by Ms. Giancola.

20 MS. WEST: After all that, Paul, do you
21 have anything further that you want to add?

22 MR. FANGMAN: No, thank you.

23 MS. WEST: Are you still instructing the
24 witness not to answer?

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1 MR. FANGMAN: Yes.

2 BY MS. WEST:

3 Q. Are you taking the advice of Mr. Fangman
4 and refusing to answer?

5 A. Yes.

6 Q. Okay. Did you speak with anyone in the
7 conviction integrity unit when you were reviewing
8 Mr. Fletcher's case?

9 A. No.

10 Q. Did you ever have any conversations with
11 James Papa about Mr. Fletcher's case?

12 A. To my knowledge, no.

13 Q. Did you ever have any conversations with
14 Jesse McGuire about Mr. Fletcher's case?

15 A. To my knowledge, no.

16 Q. Did you have any conversations with Nancy
17 Adducci about Mr. Fletcher's case?

18 A. To my knowledge, no.

19 Q. When you reviewed the case file prior to
20 today's deposition, did you see documents among
21 that file that were from the conviction integrity
22 unit?

23 A. I don't have an independent recollection
24 of the exact documents that I reviewed to come to

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1 my recommendation, so I can't answer that. I
2 scanned them to see if they would refresh my
3 recollection on the documents I reviewed. I do not
4 as I sit here have an independent recollection of
5 what exactly was contained in that file and what
6 exactly I used to come to my recommendation.

7 **Q. And when you reviewed the case file a week**
8 **ago, did you see any documents in that case file**
9 **from the conviction integrity unit?**

10 A. I did not spend a lot of time re-reviewing
11 the file. I scanned them quickly. As you stated
12 earlier, there were hundreds of ones. So it was a
13 very quick scan, and I stopped at the documents
14 that had my name on it, like you showed me, police
15 reports, things like that, just to see if I was
16 familiar with them.

17 So I do not know if there are documents in
18 that case file as we sit here today from the
19 post-conviction unit.

20 **Q. I know you testified that you did not**
21 **conduct an investigation relative to Mr. Fletcher's**
22 **case; correct?**

23 A. Correct.

24 **Q. Okay. So it's safe to say -- strike that.**

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1 **Did you speak with any witnesses or**
2 **eyewitnesses relative to the underlying criminal**
3 **case during your review of Mr. Fletcher's case?**

4 A. No.

5 **Q. Did you speak to any detectives or police**
6 **officers that were involved in the underlying**
7 **investigation in your review of Mr. Fletcher's**
8 **case?**

9 A. No.

10 **Q. You indicated earlier that you don't have**
11 **an independent recollection of what documents you**
12 **reviewed specifically, but you told me that you**
13 **would have reviewed trial transcripts from the**
14 **criminal proceedings; correct?**

15 A. In general, yes. If they were in the
16 file, I would have reviewed them in making a
17 recommendation.

18 **Q. And you would have reviewed the**
19 **investigative file or the current retention file**
20 **from the police department as well; is that right?**

21 A. What do you mean by "investigative file"?

22 **Q. Sure.**

23 **So would you have reviewed police reports**
24 **from CPD relative to the underlying investigation?**

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1 MR. OBERTS: Objection, speculation,
2 foundation.

3 THE WITNESS: I don't have an independent
4 recollection of what exactly I reviewed in the
5 file, but in general, if there were some police
6 reports in there, I may have reviewed them.

7 BY MS. WEST:

8 Q. Generally would you have wanted to request
9 the appellate record from Mr. Fletcher's case?

10 MR. FANGMAN: Objection, deliberative
11 process privilege, and I'm asking Ms. Giancola not
12 to answer.

13 THE WITNESS: I will take Mr. Fangman's
14 advice.

15 MS. WEST: So for the record, I don't
16 agree that deliberative process applies based on
17 Judge Wood's order that we ask what procedures were
18 followed, what documents were reviewed. I think
19 that question goes directly to both of those
20 topics.

21 MR. FANGMAN: Maybe the form of the
22 question. You said would you have wanted to have,
23 which implied an opinion. I don't know if you
24 meant "did you."

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1 BY MS. WEST:

2 Q. Did you request the appellate record in
3 Mr. Fletcher's underlying criminal case?

4 MR. OBERTS: I object to speculation,
5 foundation.

6 THE WITNESS: To my knowledge, I did not
7 make a request. Whether there were transcripts
8 already in the file, I do not know.

9 BY MS. WEST:

10 Q. Did you speak with Mr. Fletcher himself
11 when reviewing his case?

12 A. No.

13 Q. Did you speak with any of Mr. Fletcher's
14 criminal defense attorneys in your review of his
15 case?

16 A. No.

17 Q. Outside of reviewing documents that were
18 in the state's attorney's case file, did you do
19 anything else in order to come to your
20 recommendation on retrial?

21 MR. OBERTS: Objection, speculation,
22 foundation, and vague.

23 THE WITNESS: What do you mean by "do
24 anything else"?

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1 BY MS. WEST:

2 Q. Other than reviewing documents, did you
3 speak to anyone?

4 A. No.

5 Q. Other than reviewing documents, did you
6 attempt to locate witnesses other than the victim's
7 family?

8 MR. OBERTS: Objection, vague, and to the
9 extent it assumes a fact not in evidence that any
10 family members would be located as part of her
11 review.

12 But with that, please go ahead.

13 THE WITNESS: My role in this was to
14 review the case file. That's it.

15 BY MS. WEST:

16 Q. Did you issue any subpoenas for documents
17 to third parties relative to Mr. Fletcher's
18 criminal case?

19 A. No.

20 Q. I know you previously testified that you
21 conducted this review alone, but who was involved
22 in the decision-making process?

23 MR. OBERTS: Objection, speculation,
24 foundation.

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1 THE WITNESS: I made a recommendation. I
2 would have notified Risa and potentially her
3 deputy. And past that, I was not part of any
4 further decision making. So my part was a
5 recommendation. Who made the ultimate decision, I
6 have no idea.

7 BY MS. WEST:

8 Q. Were you involved in any conversations
9 with Risa or anyone else regarding your
10 recommendation?

11 A. No. To my personal knowledge, there was
12 no follow-up with me or meetings or anything
13 regarding the ultimate decision. I do not believe
14 I was part of past my recommendation.

15 MR. STARR: May I ask that the court
16 reporter read back that question? I had another
17 internet glitch. I apologize.

18 (Record read.)

19 MR. STARR: Thank you.

20 BY MS. WEST:

21 Q. And you did, in fact, make a formal
22 recommendation in Mr. Fletcher's case; correct?

23 A. Yes.

24 Q. Let me show you what we will mark as

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1 **Exhibit 3.**

2 **For the record, this is CCSAO Conflicts**
3 **Fletcher Dixon Bogucki 20cv4768_001631, through**
4 **1632.**

5 **(Exhibit 3 marked for**
6 **identification.)**

7 BY MS. WEST:

8 **Q. All right. Can you see a document up on**
9 **your screen?**

10 A. Yes.

11 **Q. Okay. Does this document have the word**
12 **"Memorandum" on the top?**

13 A. It does.

14 **Q. Okay. Are you familiar with this**
15 **document?**

16 A. It appears -- it states it is from Toni
17 Giancola, so yes, that appears to be the memo, the
18 memoranda.

19 **Q. And did you prepare this memorandum?**

20 A. I believe I did.

21 **Q. And it was directed to Risa Lanier and**
22 **Natosha Toller.**

23 **Do you see that?**

24 A. I do see that, yes.

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1 **Q. This memorandum, is this the way you**
2 **documented your recommendation?**

3 A. I believe that is the memorandum I
4 generated to give my recommendation, yes.

5 **Q. Did you verbally give a recommendation to**
6 **Risa?**

7 MR. OBERTS: Objection, foundation.

8 THE WITNESS: I believe the way I gave my
9 recommendation was via this memorandum. To my
10 recollection, I don't have any memory of a
11 conversation regarding the memorandum, if that's
12 what you're asking.

13 BY MS. WEST:

14 **Q. Correct. Do you have an independent**
15 **recollection of calling Risa and saying I'm sending**
16 **you this memorandum. My recommendation is this?**

17 A. No.

18 **Q. Was it the procedure in the office at the**
19 **time in January of 2020 to document your**
20 **recommendation in a memorandum?**

21 MR. OBERTS: Objection, foundation,
22 speculation to the extent asked and answered, and
23 to the extent it calls for a Rule 30(b)(6) opinion
24 regarding policies, practices, and procedures on

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1 behalf of the state's attorney's office rather than
2 her procedure.

3 Go ahead.

4 THE WITNESS: I don't know what you mean
5 by "procedure."

6 MR. OBERTS: Objection, vague.

7 BY MS. WEST:

8 **Q. Are you aware if in January 2020 there was**
9 **a procedure at the state's attorney's office that**
10 **required you to document your recommendation in a**
11 **memorandum?**

12 A. I can't speak to any policies or
13 procedures, only as to my involvement on this case.

14 MR. OBERTS: Objection, foundation, to the
15 extent asked and answered.

16 BY MS. WEST:

17 **Q. Generally what factors were considered**
18 **when reviewing Mr. Fletcher's case file?**

19 MR. OBERTS: Objection, vague,
20 speculation, and foundation.

21 THE WITNESS: What do you mean by
22 "reviewing"? Coming to my recommendation or --

23 BY MS. WEST:

24 **Q. In coming to your recommendation, what**

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1 **were the factors that you generally considered**
2 **applicable?**

3 MR. OBERTS: I'm just going to object in
4 that the factors that she might consider with
5 respect to this would be considered work product.
6 Factors in general as to retry I would not object
7 to such work product as that would be a general --
8 I believe that would be a permissible question.

9 BY MS. WEST:

10 **Q. Let's do this way.**

11 **You had never reviewed a case to make a**
12 **recommendation about retrial or not prior to**
13 **Mr. Fletcher's; correct?**

14 A. To my knowledge --

15 MR. OBERTS: Objection, speculation,
16 foundation to the extent asked and answered, and
17 form.

18 Go ahead.

19 THE WITNESS: To my knowledge, no. I
20 mean, no, I have not. I have reviewed cases in
21 terms of other -- but for the retrial aspect, I
22 don't believe that I have done so prior or since to
23 my personal knowledge.

24

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1 BY MS. WEST:

2 Q. Okay. When you conducted the review of
3 Mr. Fletcher's case, what were the factors that you
4 were looking for that guided your decision making
5 on the recommendation?

6 MR. OBERTS: I object to that.

7 The court order provides that the parties
8 may further ask about the factors that as a general
9 matter determine whether the CCSAO will retry a
10 criminal defendant or oppose a COI. It doesn't
11 state with regard to this case. So I object to the
12 extent the question asks with regard to Mr. Fletcher's
13 case.

14 I have no objection to asking as a general
15 matter, if she's able to answer the question of
16 factors that as a general matter determine whether
17 the CCSAO will retry a criminal defendant.

18 BY MS. WEST:

19 Q. Since you've never conducted an
20 investigation relative to giving a recommendation
21 on retrial, did you even know what factors --
22 strike that.

23 What factors were you looking to consider
24 when you were looking into making a recommendation

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1 **on any case about retrial?**

2 MR. OBERTS: Objection, foundation,
3 speculation.

4 MR. STARR: Join, form.

5 THE WITNESS: I can't really speak on
6 retrial. I can speak only to analyzing a case in
7 general.

8 BY MS. WEST:

9 **Q. And you didn't have any conversations with**
10 **anyone at the state's attorney's office about how**
11 **to guide you through the process of reviewing a**
12 **case file in order to make a recommendation on**
13 **retrial; is that right?**

14 MR. OBERTS: Objection to form.

15 MR. STARR: Join.

16 THE WITNESS: To my knowledge, I don't
17 recall having conversations.

18 BY MS. WEST:

19 **Q. In reviewing a criminal case to make a**
20 **determination on whether or not to retry that**
21 **individual, do you think it is important to factor**
22 **in the availability of witnesses?**

23 MR. OBERTS: Objection, foundation,
24 speculation.

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1 MR. FANGMAN: Objection, deliberative
2 process privilege.

3 THE WITNESS: I'm sorry. I didn't hear
4 Mr. Fangman.

5 MR. FANGMAN: I'm objecting to deliberative
6 process privilege, and I'm directing Ms. Giancola
7 not to answer mostly because it's asking which
8 factors are important.

9 THE WITNESS: I will follow his advice.

10 BY MS. WEST:

11 Q. Okay. Let me ask you this.

12 Are factors reviewing a case for trial any
13 different than reviewing a case for retrial?

14 MR. OBERTS: Objection, foundation,
15 speculation.

16 MR. STARR: I apologize. I didn't hear
17 that question. I only heard the first part of it.

18 MS. WEST: Sure.

19 BY MS. WEST:

20 Q. Were factors in reviewing a case for trial
21 any different than reviewing a case for retrial?

22 MR. OBERTS: Objection foundation,
23 speculation.

24 THE WITNESS: I can't really speak to the

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1 factors to consider in retrial as to my knowledge
2 this is the only time I've done it.

3 BY MS. WEST:

4 **Q. Based on your review of the case file, are**
5 **you aware of evidence that exonerated Mr. Fletcher?**

6 MR. OBERTS: Objection, time frame, scope,
7 speculation, and foundation.

8 THE WITNESS: Could you repeat the
9 question?

10 MS. WEST: Sure.

11 BY MS. WEST:

12 **Q. When you reviewed Mr. Fletcher's case file**
13 **in December of 2019 or January of 2020, are you**
14 **aware of evidence that exonerated Mr. Fletcher?**

15 MR. OBERTS: Objection, speculation,
16 foundation, and vague.

17 THE WITNESS: Exonerate him, no, not to my
18 knowledge.

19 MS. WEST: Can we take a five-minute break
20 real quick?

21 MR. OBERTS: Sure.

22 MS. WEST: Thank you.

23 (Recess taken.)

24

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1 BY MS. WEST:

2 Q. All right. So you can't tell me as a
3 general matter what factors are to be considered
4 when determining whether to retry a criminal
5 defendant; is that right?

6 MR. OBERTS: Objection, form, to the
7 extent asked and answered, and foundation.

8 THE WITNESS: I can't speak as a general
9 matter.

10 BY MS. WEST:

11 Q. Okay. Based on that then, you can't tell,
12 me whether a factor is the strength of the case?

13 A. For a retrial, no, I can't speak to
14 general things to consider.

15 Q. And you can't tell me that the
16 availability of witnesses is a factor to be
17 considered in the retrial of a criminal defendant?

18 MR. OBERTS: Objection, foundation,
19 speculation, asked and answered.

20 Go ahead.

21 THE WITNESS: I can't speak to the retrial
22 factors.

23 BY MS. WEST:

24 Q. I'm asking specifically about you can't

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1 **tell me whether or not the strength of a case is a**
2 **factor to be considered for retrial of a defendant;**
3 **is that right?**

4 MR. STARR: Asked and answered.

5 MR. OBERTS: Object, asked and answered,
6 form, speculation, and foundation.

7 THE WITNESS: No, I can't speak as a
8 general matter of factors to be considered in
9 retrial.

10 BY MS. WEST:

11 **Q. So then you don't know if resource**
12 **management is a factor to be considered when**
13 **reviewing a case for retrying a defendant; correct?**

14 MR. OBERTS: Objection, form, foundation,
15 speculation.

16 Go ahead.

17 THE WITNESS: Correct, same answer.

18 BY MS. WEST:

19 **Q. And then you can't tell me whether or not**
20 **the availability of witnesses is a factor to**
21 **generally be considered when considering retrying a**
22 **criminal defendant; correct?**

23 MR. STARR: Asked and answered.

24 MR. OBERTS: Form, foundation; speculation,

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1 foundation.

2 THE WITNESS: Correct. I cannot speak of
3 general factors.

4 BY MS. WEST:

5 Q. And you can't tell me whether the length
6 of the criminal defendant's incarceration is a
7 factor to be considered when retrying that criminal
8 defendant; correct?

9 MR. OBERTS: Form, foundation; speculation,
10 foundation.

11 MR. STARR: Join.

12 THE WITNESS: Correct, I cannot.

13 MS. WEST: That's all I have for you.

14 THE WITNESS: Thank you.

15 MS. WEST: Some of the other attorneys may
16 have questions.

17 MR. MICHALIK: No questions from me.

18 MR. STARR: I just have a few.

19 EXAMINATION

20 BY MR. STARR:

21 Q. Good morning, Ms. Giancola. As I stated
22 earlier, my name is Sean Starr. I represent the
23 Plaintiff, Mr. Fletcher, in this matter.

24 I believe you testified earlier that you

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1 do not recall the entirety of the evidence that you
2 reviewed back in 2019/2020 when you were reviewing
3 this case and making a determination about whether
4 it should be retried; is that correct?

5 MR. OBERTS: Object to the extent it
6 mischaracterizes testimony and assumes facts not
7 evidence.

8 Go ahead.

9 THE WITNESS: I can't remember specific
10 documents.

11 BY MR. STARR:

12 Q. You reviewed the file, but you don't
13 remember specifically which documents you reviewed
14 in the file; correct?

15 A. Correct.

16 Q. And so when you say you're not aware of
17 any evidence that you reviewed that exonerated
18 Mr. Fletcher, that's because you can't recall all
19 of the evidence you reviewed; correct?

20 MR. FANGMAN: Objection, calls for
21 deliberative process privilege, and I am asking
22 Ms. Giancola not to answer.

23 THE WITNESS: I will follow Mr. Fangman's
24 advice.

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1 MR. OBERTS: Object, vague, speculation,
2 foundation.

3 BY MR. STARR:

4 Q. You've had various stints in felony
5 review. You've already testified to that; correct?

6 A. Various times which I rotated through
7 felony review, yes.

8 Q. And when you were asked to review this
9 case to determine whether or not it should be
10 retried, did you apply your experience from your
11 time in felony review to that analysis?

12 MR. OBERTS: Objection, vague.

13 THE WITNESS: I wouldn't say it's limited
14 to my time in felony review. I would say it's my
15 experience as a whole.

16 BY MR. STARR:

17 Q. Okay. That's fair. And so let me ask
18 that then.

19 When you were tasked with reviewing
20 whether or not Mr. Fletcher's case should be
21 retried, you relied on your experience as a
22 long-tenured Cook County State's Attorney to make
23 your determination; correct?

24 A. As I do in any case, yes. I rely on my

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1 experience as a whole.

2 **Q. And your determination was that**
3 **Mr. Fletcher's case should not be retried; correct?**

4 MR. OBERTS: Objection, calls for work
5 product. I would object that it calls for work
6 product, and it also is contrary to the order that
7 states specific reasons -- may not ask the above
8 about the specific reasons and not to -- for example,
9 may not ask the witness about the specific factors
10 made in favor or against retrying or any
11 determinations or any recommendations that were
12 made, accepted, or rejected.

13 MR. FANGMAN: Objection, deliberative
14 process privilege, and I'm asking Ms. Giancola not
15 to answer.

16 MR. STARR: I wasn't asking her for any
17 factors. I just asked whether or not she made a
18 recommendation that he should not be retried.

19 MR. OBERTS: That's stated in the order,
20 Sean. Or any recommendations that were made,
21 accepted, or rejected with respect to Fletcher's
22 retrial and COI.

23 And so I would object pursuant to the
24 order in addition to -- the order being the

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1 July 8, 2024, Judge Wood order, in addition to work
2 product, and I believe Mr. Fangman had a response.

3 MR. STARR: So, Bill, are you instructing
4 her not to answer? I know Mr. Fangman had, but are
5 you as well?

6 MR. OBERTS: I would be pursuant to the
7 order, yes.

8 BY MR. STARR:

9 Q. Okay. Are you going to take your
10 attorneys' instruction and refuse to answer my
11 question?

12 A. My attorney's and Mr. Fangman's advice,
13 yes.

14 Q. Is it correct that the Cook County State's
15 Attorney's Office chose not to retry Mr. Fletcher?

16 MR. OBERTS: Object to foundation and to
17 speculation.

18 THE WITNESS: I have no idea what they
19 ultimately decided to do. I made a recommendation,
20 and I believe to my knowledge that's the extent of
21 my involvement in the case.

22 BY MR. STARR:

23 Q. As you sit here today, are you aware that
24 the state's attorney's office did not, in fact,

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1 **retry Mr. Fletcher?**

2 MR. OBERTS: Object to speculation and
3 foundation, and I would object to the extent it
4 calls for attorney-client privilege. So if she
5 would know that answer pursuant to attorney-client
6 privilege, I would instruct her not to answer.

7 MR. STARR: Okay. That's fair.

8 BY MR. STARR:

9 **Q. So I'm not asking you what you learned**
10 **from your attorney. I'm asking you whether or not**
11 **you know as you sit here today that Mr. Fletcher**
12 **was not retried by the Cook County State's Attorney's**
13 **Office?**

14 A. I do not believe I was ever personally
15 informed on what the ultimate decision was on this.
16 Obviously, once I learned of litigation, that's a
17 different story.

18 **Q. And when you say once you learned of**
19 **litigation, you're referring to conversations you**
20 **had with your attorney?**

21 A. Right, involving this deposition litigation.

22 **Q. Okay. If I represent to you that the**
23 **state's attorney's office chose not to retry**
24 **Mr. Fletcher, do you have any reason to dispute**

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1 **that?**

2 MR. OBERTS: Object to foundation,
3 speculation.

4 THE WITNESS: I mean, I can only assume
5 we're here based on that.

6 BY MR. STARR:

7 **Q. So, just to be clear, my question is a**
8 **little different.**

9 **If I represent to you that the state's**
10 **attorney's office chose not to retry Mr. Fletcher,**
11 **do you have any reason to dispute that?**

12 MR. OBERTS: Objection, foundation.

13 THE WITNESS: To you informing me of that,
14 no. I would take you at your word.

15 BY MR. STARR:

16 **Q. Okay. Do you know a former Chicago Police**
17 **Detective by the name of Jerome Bogucki?**

18 A. Not to my knowledge.

19 **Q. Does that name ring any bells whatsoever?**

20 MR. OBERTS: Objection, form, vague.

21 THE WITNESS: In what terms? Do I know
22 him?

23 BY MR. STARR:

24 **Q. Do you know who he is?**

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1 A. No, I don't know. To my knowledge, I have
2 never met him.

3 **Q. Are you aware that he was a detective and**
4 **investigator in the Willie Sorrell homicide?**

5 MR. OBERTS: Objection, foundation,
6 speculation.

7 THE WITNESS: This case?

8 BY MR. STARR:

9 **Q. Yeah. Willie Sorrell was the victim in**
10 **this case. I'm wondering if you're aware that**
11 **Detective Bogucki was one of the detectives that**
12 **investigated this case?**

13 A. During the course of my review, I'm sure
14 that's something I would have been made aware of by
15 the mere fact of police reports authored by that
16 individual if that was the detective that was
17 involved in this case.

18 **Q. Are you aware of any allegations of**
19 **misconduct relative to Detective Bogucki?**

20 A. Personal knowledge, no.

21 **Q. Were you made aware of any allegations of**
22 **misconduct relative to Detective Bogucki during the**
23 **time in which you were reviewing the case?**

24 A. I know it was referenced by Pallmeyer in

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1 her decision; but beyond that, I have no other
2 information.

3 Q. And you've never tried a case -- well,
4 strike that.

5 Did you ever try a case where Detective
6 Bogucki was the investigator/detective?

7 MR. OBERTS: Objection, foundation.

8 THE WITNESS: I have tried hundreds of
9 cases. I cannot say with any certainty if I did or
10 did not. But as I sit here right now, I have no
11 personal knowledge of trying a case with him.

12 BY MR. STARR:

13 Q. That's what I'm asking. So I'm going to
14 ask you about all of these detectives and your
15 experience with them. So I'm going to ask about
16 trying cases with them to your personal knowledge.

17 A. Understood.

18 Q. Okay. How about a former Chicago Police
19 Detective by the name of Ray or Raymond Schalk?

20 Do you know who that is?

21 A. I do not know that person.

22 Q. And are you aware that Detective Schalk
23 was one of the detectives that investigated the
24 Willie Sorrell homicide?

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1 A. I'm sure during the course of my review I
2 became aware of that fact if that detective was
3 listed on police reports, but beyond that, I don't
4 have any independent recollection.

5 **Q. Do you know -- strike that.**

6 **Were you ever made aware of any**
7 **allegations of misconduct relative to Detective**
8 **Schalk?**

9 MR. OBERTS: Objection, foundation.

10 THE WITNESS: Like I said, there were
11 references in Pallmeyer's opinion to detectives
12 involved in the case. The specific names I cannot
13 personally recall right now, but she referenced
14 that. Beyond that phrase in the case, I don't have
15 any further knowledge of those detectives or any
16 other allegations made against them.

17 BY MR. STARR:

18 **Q. And do you recall whether or not you ever**
19 **prosecuted a case where Detective Schalk was one of**
20 **the investigating detectives?**

21 MR. OBERTS: Objection, foundation.

22 THE WITNESS: To my knowledge, I don't
23 recall a case which I handled of his.

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1 BY MR. STARR:

2 Q. How about a former Chicago -- I believe
3 he's a former Chicago Police Detective by the name
4 of Anthony or Tony Noradin? Do you know who that
5 is?

6 A. I do recognize that name, but are you
7 going to ask me then do I recollect any cases? I
8 recognize the name.

9 Q. How do you recognize the name, ma'am?

10 A. Just from homicides that I've handled
11 throughout the course of my career.

12 Q. Okay. And so it's your belief that you
13 have prosecuted cases, homicide cases where
14 Detective Noradin was an investigating detective;
15 is that correct?

16 MR. OBERTS: Objection, speculation.

17 THE WITNESS: By prosecuted, I mean, I
18 handled multiple different phases. I've been in
19 Branch 66. I've had detectives bring in witnesses,
20 subpoenas. So have I crossed paths with him? I'm
21 sure I have. Actually went to trial on a case of
22 his, I'm not sure.

23 BY MR. STARR:

24 Q. Okay. Let me ask you this then.

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1 **Are you able to independently recall any**
2 **specific cases you worked as a state's attorney**
3 **that involved Detective Noradin?**

4 A. Off hand, I could have, but not as I sit
5 here right now to spit out a name of an offender on
6 a case.

7 **Q. Are you aware that Detective Noradin was**
8 **assigned to the Willie Sorrell homicide and**
9 **investigated that case?**

10 MR. OBERTS: Objection, foundation.

11 THE WITNESS: I don't recall. I don't
12 have an independent recollection if I knew that.
13 Like I said, if he was listed, I may have. But as
14 I sit here today, I don't know.

15 BY MR. STARR:

16 **Q. When you were reviewing the Fletcher case**
17 **in late 2019 or early 2020, do you have any**
18 **recollection of seeing Mr. Noradin's name on any**
19 **paperwork or any police reports and recalling that**
20 **you know who he is?**

21 A. Independent recollection, no. My recall
22 of Detective Noradin is just I recognize the name
23 because I know he worked a lot of cases and a lot
24 of homicides, so...

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1 **Q. How about a former Chicago Police**
2 **Detective and Sergeant by the name of Anthony or**
3 **Tony Wojcik? Do you know who that is?**

4 A. That name does not sound familiar to me.

5 **Q. Okay. Are you aware that Sergeant Wojcik**
6 **was assigned in some capacity to investigate the**
7 **Willie Sorrell homicide?**

8 MR. OBERTS: Objection, foundation.

9 THE WITNESS: Personal knowledge, no.

10 BY MR. STARR:

11 **Q. If you had reviewed the police reports**
12 **that his name was on, you would have known that at**
13 **the time of your review of the Fletcher case;**
14 **correct?**

15 A. If I paid attention it that, yes.

16 **Q. Well, did you pay attention to who the**
17 **police officers were when you were reviewing the**
18 **Fletcher case?**

19 MR. OBERTS: Objection, foundation,
20 speculation.

21 MR. MR. FANGMAN: Objection. Calls for
22 deliberative process privilege in terms of paying
23 attention to. I'm asking Ms. Giancola not to
24 answer that question.

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1 THE WITNESS: I will follow Mr. Fangman's
2 advice.

3 MR. STARR: Okay. I think she opened the
4 door.

5 BY MR. STARR:

6 Q. You are going to refuse to answer my
7 question?

8 A. I'm following the advice of Mr. Fangman.

9 Q. And refusing to answer my question;
10 correct?

11 A. Yes.

12 Q. Okay. And you testified that you didn't
13 independently interview anyone that was involved in
14 the Willie Sorrell homicide, correct, whether it
15 was a witness or a police officer or suspect?

16 MR. OBERTS: Objection, form, and it's
17 been asked and answered.

18 THE WITNESS: Correct.

19 MR. OBERTS: You did not.

20 THE WITNESS: I did not.

21 BY MR. STARR:

22 Q. And were you ever made aware at any point
23 during your review of the case that -- strike that.

24 Are you familiar with one of the witnesses

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1 **being Edward Cooper?**

2 A. I'm sorry. Could you repeat that?

3 Q. Sure.

4 Do you recall in your time being assigned
5 to review the Fletcher case that one of the
6 witnesses to the homicide of Willie Sorrell was a
7 man named Edward Cooper?

8 MR. OBERTS: Object to foundation.

9 THE WITNESS: That name I do remember. I
10 believe it's also contained in my memorandum.

11 MR. STARR: Were you ever made aware that
12 Mr. Cooper has testified that the detectives
13 investigating the Sorrell homicide indicated to him
14 who he should identify in a photo array?

15 MR. OBERTS: Objection, foundation and
16 time frame/scope.

17 THE WITNESS: Can you clarify what you
18 mean by "made aware"?

19 BY MR. STARR:

20 Q. I'm talking about the time -- and that's a
21 fair question. I'll try to do the best that I can
22 to qualify this.

23 I'm talking about when you were assigned
24 to review the case in 2019 and early 2020, were

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1 **you -- did you become aware at any point that**
2 **Mr. Cooper made any allegations or any statements**
3 **or testified to the fact in any form, whether it**
4 **was in a written affidavit or oral testimony, that**
5 **the detectives investigating the case unduly**
6 **influenced his identification of Mr. Fletcher?**

7 MR. FANGMAN: Objection, calls for
8 deliberative process privilege as to unduly
9 influence, and I'm asking Ms. Giancola not to
10 answer.

11 BY MR. STARR:

12 **Q. Are you going to take Mr. Fangman's advice**
13 **and refuse to answer my question?**

14 A. Yes.

15 **Q. Let me try to ask it another way.**

16 Did you -- during your time assigned to
17 the Fletcher case, did you ever learn that
18 Mr. Cooper was saying that the police pointed at a
19 photo and told him who to identify during the photo
20 array?

21 MR. MICHALIK: Object to form.

22 THE WITNESS: The specific facts of what I
23 did or did not review to come to my opinion I do
24 not have a personal recollection of.

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1 BY MR. STARR:

2 Q. But hearing that doesn't refresh your
3 recollection, though; does it?

4 THE WITNESS: No.

5 MR. OBERTS: Objection, form.

6 THE WITNESS: I don't have personal
7 knowledge of exactly the facts and specifics.

8 BY MR. STARR:

9 Q. Okay. During your time assigned to the
10 Fletcher case, did you ever learn that a
11 witness -- strike that.

12 Are you familiar with a witness by the
13 name of Sheenee Friend?

14 A. I know that name was a witness that's in
15 my memorandum.

16 Q. And during your time assigned to the
17 Fletcher case, did you ever learn -- during your
18 time assigned to the Fletcher case in late 2019 or
19 early 2020, did you ever learn that Sheenee Friend
20 was alleging that the detectives investigating the
21 Sorrell homicide indicated to her who to chose in a
22 photo array?

23 MR. OBERTS: Objection, form, vague.

24 THE WITNESS: As to specific facts and

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1 details regarding each witness, I do not have an
2 independent recollection of.

3 BY MR. STARR:

4 **Q. Are you familiar that -- strike that.**

5 **Are you aware that there was a witness**
6 **involved in the Sorrell homicide by the name of**
7 **Emmett Wade?**

8 MR. OBERTS: During her review, correct?

9 MR. STARR: Correct.

10 MR. OBERTS: Go ahead.

11 THE WITNESS: That name, again, I believe
12 is contained in my memorandum. Specifics of what
13 that witness did or did not see, I do not have a
14 personal recollection of.

15 BY MR. STARR:

16 **Q. And during your time assigned to the**
17 **Fletcher case in 2019, early 2020, were you ever**
18 **made aware that Emmett Wade was alleging that the**
19 **detectives investigating the Sorrell homicide also**
20 **indicated to him who to chose in a photo array?**

21 MR. MICHALIK: Objection, form.

22 MR. OBERTS: Form and vague.

23 Go ahead.

24 THE WITNESS: Specific facts of what that

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1 witness did or did not see or say or did not say, I
2 do not have a personal recollection of.

3 BY MR. STARR:

4 **Q. Do you know as a general matter whether if**
5 **witnesses recanting their prior identifications is**
6 **a factor in determining whether or not to retry a**
7 **criminal defendant who's been exonerated?**

8 MR. OBERTS: Objection, foundation,
9 speculation.

10 THE WITNESS: I cannot really speak to
11 general factors in making a decision to retry an
12 individual.

13 BY MR. STARR:

14 **Q. You also referenced an individual by the**
15 **name of Clinton Fletcher in your memorandum.**

16 **Are you familiar with that person?**

17 A. Clinton -- can you show me what you're
18 referencing?

19 MR. STARR: Yeah. Let me pull it up.

20 I believe this is marked as Exhibit No. 3;
21 is that right?

22 MS. WEST: Yes.

23 BY MR. STARR:

24 **Q. So what I'm referring to is this second**

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1 full paragraph, the second sentence reads: "In
2 1995, detectives showed Edward Cooper (the driver)
3 a photo array that contained Clinton Fletcher
4 because another detective told them that Clinton
5 Fletcher lived near Cooper."

6 Does that refresh your recollection at
7 all?

8 A. My independent recollection, no.

9 Q. Do you have any independent recollection
10 of an individual named Clinton Fletcher being
11 involved in this case in any way, shape, or form?

12 A. No, no independent recollection.

13 Q. As you sit here today, are you able to
14 tell me where you got that information from, that
15 line that says in 1995 detectives showed Cooper a
16 photo array that contained Clinton Fletcher?

17 MR. OBERTS: Objection, foundation,
18 speculation.

19 THE WITNESS: Specifically, no.

20 BY MR. STARR:

21 Q. Okay. And you've already testified you
22 did no independent investigation, so you would not
23 have investigated this Clinton Fletcher lead;
24 correct?

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1 MR. OBERTS: Objection, form, asked and
2 answered.

3 Go ahead.

4 THE WITNESS: I did not do any investigation
5 in the matter.

6 BY MR. STARR:

7 Q. Okay. As you sit here today, are you
8 aware that Mr. Fletcher received a certificate of
9 innocence?

10 MR. OBERTS: Objection to the extent --
11 well, objection, foundation, speculation, but
12 objection to the extent it calls for attorney-client-
13 privileged communication.

14 Go ahead and answer but for -- if you can
15 answer but for any communications with your attorney.

16 THE WITNESS: I don't recall ever being
17 informed what did or did not happen after my
18 involvement in the case.

19 BY MR. STARR:

20 Q. I think that answers my next question.

21 You were not involved in the decision-
22 making process about whether or not the Cook County
23 State's Attorney's Office would contest a petition
24 for certificate of innocence for Mr. Fletcher;

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1 **correct?**

2 MR. OBERTS: Objection, form.

3 THE WITNESS: To my knowledge, I had no
4 involvement whatsoever.

5 BY MR. STARR:

6 **Q. And are you familiar with what a**
7 **certificate of innocence is?**

8 MR. OBERTS: Objection, vague.

9 THE WITNESS: I recently heard the term.
10 I've never been in that unit, and I can't speak --
11 I know it exists. Beyond that, I can't speak of
12 anything else.

13 BY MR. STARR:

14 **Q. Do you have any personal understanding of**
15 **what a certificate of innocence is?**

16 A. No. The procedure, no.

17 **Q. But do you know what the actual import of**
18 **the certificate of innocence being granted is?**

19 MR. MICHALIK: Objection, form.

20 MR. OBERTS: And it calls for a legal
21 conclusion.

22 THE WITNESS: What is required to get one
23 or the legal remedy after it, no. I don't know
24 anything regarding certificates of innocence. I

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1 have never been in that unit. I have never dealt
2 with those.

3 BY MR. STARR:

4 Q. Okay. I'm going to show you what I'm
5 going to mark as Exhibit No. 4. And for the
6 record, this is Fletcher 14179.

7 (Exhibit 4 marked for
8 identification.)

9 BY MR. STARR:

10 Q. Can you see this document on your screen,
11 ma'am?

12 A. Yes.

13 Q. Do you see on the bottom here in the
14 right-hand corner it says Fletcher 14179?

15 A. Correct.

16 Q. Okay. And at the top here it lists that
17 this document is an order granting the certificate
18 of innocence; correct?

19 A. That's what the document states, yes.

20 Q. And it's People v. James Fletcher; correct?

21 A. That's what's written on the document.

22 Q. Okay. And it says it's Case No.
23 02 CR-1666901; correct?

24 A. That's what's written on the document.

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1 Q. Okay. I just wanted to show you there's
2 four categories here. It says, "This cause comes
3 before the Court on defendant/petitioner's petition
4 for certificate of innocence pursuant to 735 ILCS
5 5/2-702. The Court being fully advised finds by a
6 preponderance of evidence the following:" And
7 there's four -- five different categories.

8 Do you see that, ma'am?

9 A. I do see that on the order.

10 Q. Okay. And just in summary form, the first
11 category is that the petitioner/defendant was
12 convicted of one or more felonies by the State of
13 Illinois in Cook County.

14 Do you see that?

15 A. That's what the order states.

16 Q. And then No. 2 is the defendant's/
17 petitioner's judgment of conviction was reversed or
18 vacated and the indictment or the information was
19 dismissed in summary form.

20 Do you see that?

21 A. Yes.

22 MR. OBERTS: I'm just objecting as to
23 foundation.

24 MR. STARR: Sure.

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1 MR. MICHALIK: I'm going to join in the
2 objection and object to the form of the question as
3 having this document read into the record in this
4 fashion.

5 MR. STARR: I understand.

6 BY MR. STARR:

7 Q. And No. 3 here says in summary fashion the
8 defendant's/petitioner's indictment or information
9 was dismissed and he or she was acquitted and the
10 petition was filed within two years of the
11 dismissal date.

12 Do you see that?

13 MR. OBERTS: Objection, foundation.

14 MR. MICHALIK: Join.

15 THE WITNESS: That's what the order that
16 you're showing me says.

17 BY MR. STARR:

18 Q. Okay. And No. 4 says, in a summary
19 fashion again, the defendant/petitioner is innocent
20 of the offenses charged in the indictment or
21 information; correct?

22 MR. OBERTS: Objection, foundation.

23 MR. MICHALIK: Join.

24 THE WITNESS: I mean, that's reading

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1 portions of the order that you showed me.

2 BY MR. STARR:

3 **Q. That's correct; right?**

4 A. That's what it says on the order.

5 **Q. And No. 5 says the defendant/petitioner**
6 **did not by his or her own conduct voluntarily cause**
7 **or bring about his or her conviction; correct?**

8 MR. OBERTS: Objection, foundation.

9 MR. MICHALIK: Join.

10 THE WITNESS: That's what the document
11 says that you're showing me.

12 BY MR. STARR:

13 **Q. And then it says this petition for**
14 **certificate of innocence is granted; correct?**

15 MR. OBERTS: Objection, foundation.

16 THE WITNESS: That's what it says.

17 BY MR. STARR:

18 **Q. Okay. And this one is dated October 7,**
19 **2022, signed by Chief Judge Reddick; correct?**

20 MR. OBERTS: Objection, foundation.

21 THE WITNESS: I don't have any personal
22 knowledge. It appears to be her signature, and
23 there's an entered order, but I cannot without any
24 certainty say that it was actually entered or

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1 signed by the judge because I didn't have anything
2 to do with that.

3 MR. STARR: Sure. Sure. And I certainly
4 would not misrepresent Judge Reddick's signature if
5 that wasn't a document that was produced in the
6 course of the proceedings in this case.

7 BY MR. STARR:

8 Q. So that's a certificate of innocence.
9 You've never seen a document like that before,
10 ma'am?

11 MR. OBERTS: Objection, form.

12 THE WITNESS: No.

13 MR. STARR: Well, now you have.

14 Let me to take a five-minute break. I
15 don't think I have any more questions.

16 (Recess taken.)

17 MR. STARR: Ms. Giancola, I just have a
18 couple of questions.

19 BY MR. STARR:

20 Q. I think maybe you were asked this, but I
21 don't recall.

22 Who assigned you to review the case file
23 in the Fletcher case?

24 MR. OBERTS: Objection, asked and

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1 answered.

2 THE WITNESS: Risa Lanier.

3 BY MR. STARR:

4 Q. And then your memo that was entered as
5 Exhibit 3 is directed at Risa Lanier and another
6 person by the of name Natosha Toller; is that
7 correct?

8 A. Yes.

9 Q. Who is Ms. Toller?

10 A. She would have been the position right
11 under Risa at the time, which would have been the
12 deputy of the criminal division.

13 Q. And you can't recall having any
14 conversations with them about this case; correct?

15 MR. OBERTS: Objection, form, asked and
16 answered.

17 Go ahead.

18 THE WITNESS: I mean, conversations
19 regarding my recommendation or conversations of
20 assignment?

21 BY MR. STARR:

22 Q. Any conversation about this particular
23 case, the Fletcher case?

24 MR. OBERTS: Objection, form, foundation,

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1 asked and answered, speculation.

2 THE WITNESS: I don't have any independent
3 recollection of conversations, specific conversations
4 regarding this case.

5 BY MR. STARR:

6 Q. Okay. And then when you were assigned to
7 review this case in 2019, early 2020, and you
8 reviewed the documents in the file, you would have
9 become aware that this was a 1990 homicide;
10 correct?

11 MR. OBERTS: Objection, speculation,
12 foundation.

13 THE WITNESS: I would have become aware of
14 the date of occurrence at some point during my
15 review, yes.

16 BY MR. STARR:

17 Q. And you would also have become aware that
18 the identification that occurred and led to the
19 conviction of Mr. Fletcher didn't happen until
20 2002; correct?

21 MR. OBERTS: Objection, speculation,
22 foundation.

23 THE WITNESS: The specific facts and dates
24 I don't have an independent recollection of.

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1 BY MR. STARR:

2 Q. Right. But I'm representing to you that
3 the arrest and the identification took place in
4 2002, and you would have reviewed that when you
5 reviewed the file; correct?

6 MR. OBERTS: Objection, speculation,
7 foundation.

8 THE WITNESS: If that's information that
9 was in the file, I probably would have reviewed it.
10 Specifics of where I garnered information from or
11 what actual information I garnered and where, I
12 don't have an independent recollection of specific
13 facts.

14 BY MR. STARR:

15 Q. Can you identify for me any case in your
16 entire career in the Cook County State's Attorney's
17 Office where you were involved in prosecuting a
18 case where the identification of the suspect
19 occurred 12 years after the crime?

20 MR. MICHALIK: Object to form.

21 MR. FANGMAN: Objection, calls for
22 deliberative process privilege, and I'm asking
23 Ms. Giancola not to answer.

24 MR. OBERTS: Object to foundation.

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1 MR. STARR: It's a factual question.

2 Paul, can you explain that? I said, Did
3 you ever prosecute anybody 12 years after the fact,
4 based on an identification 12 years after the
5 crime? How is that deliberative process? It's a
6 yes or no factual question.

7 MR. FANGMAN: I guess I don't get the
8 question.

9 MR. STARR: Okay. I'll reask it. I'm not
10 trying to -- again, I'm trying to have one
11 deposition where we don't fight about this.

12 BY MR. STARR:

13 **Q. Ms. Giancola, in your career as a Cook**
14 **County State's Attorney were you ever involved in**
15 **the prosecution of someone where the identification**
16 **of the suspect occurred more than 11 years after**
17 **the crime occurred?**

18 MR. OBERTS: Objection, foundation,
19 speculation, and vague.

20 MS. WEST: Form.

21 MR. MICHALIK: And form.

22 THE WITNESS: Over my 19 years, you're
23 asking me to recall specifics of each case I've
24 ever touched. That's not really a fair question

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1 BY MR. STARR:

2 Q. I'm not asking you about specifics of
3 every case you've ever touched.

4 I'm asking whether or not you can recall
5 any cases, one or more, any cases in which you
6 prosecuted somebody where the suspects were
7 identified more than 11 years after the crime
8 occurred?

9 MR. OBERTS: Objection, foundation,
10 speculation, vague, and form.

11 THE WITNESS: Your question is asking me
12 to recall specifics of each case, because in order
13 to answer that question, I would have to know each
14 case that I handled when the identifications took
15 place.

16 BY MR. STARR:

17 Q. Can you recall any case in which you
18 prosecuted somebody in which the identification of
19 the suspect occurred more than 11 years after the
20 crime occurred?

21 MR. OBERTS: Foundation, speculation,
22 form, and vague.

23 THE WITNESS: Over my 19 years, that's not
24 a fair question to ask. I cannot as I sit here

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1 recall and tell you with certainty each case that I
2 have touched the time frame between crime and
3 identification.

4 BY MR. STARR:

5 Q. As you already know, in a deposition you
6 have to answer the questions whether you think
7 they're fair or not.

8 So my question is can you recall a
9 specific case in your 19 years as a Cook County
10 State's Attorney that you were involved in where
11 someone was prosecuting for a crime that was
12 committed and the identifications were made more
13 than 11 years after the crime?

14 MR. OBERTS: Objection, foundation,
15 speculation, vague, and form.

16 THE WITNESS: No, but I cannot recall with
17 certainty identification time frames of each case
18 that I handled.

19 MR. STARR: I have no further questions.
20 Thanks a lot.

21 MS. WEST: I don't have any follow-up.

22 MR. MICHALIK: I have one. Paul Michalik
23 for the city.

24

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EXAMINATION

BY MR. MICHALIK:

Q. You just testified that you have no recollection of whether or not you prosecuted a case involving the time frame discrepancy between prosecution and the identification.

So my simple question is you can't say one way or the other; you might have, you might not have; you just can't answer that question; is that fair?

MR. OBERTS: Objection, form, speculation, foundation, and vague.

MR. STARR: Objection, form.

THE WITNESS: Because it would require me to remember specific facts of each case that I have ever touched, no, I cannot answer that question with specificity.

BY MR. MICHALIK:

Q. One way or the other; correct?

A. Correct.

MR. MICHALIK: Thank you. Nothing further.

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FURTHER EXAMINATION

BY MR. STARR:

Q. Is it unusual to prosecute somebody for a crime where the identifications are made more than 10 years after the crime?

MR. OBERTS: Object to form.

MR. FANGMAN: Objection, calls for deliberative process privilege, and I'm directing Ms. Giancola not to answer.

THE WITNESS: I'll follow his advice.

BY MR. STARR:

Q. And refuse to answer my question?

A. Yes.

Q. It's possible that you can't identify a case where you prosecuted somebody 11 years or more -- strike that.

It's possible you cannot identify a case that you prosecuted where the identifications were made more than 11 years after the crime because you've never did that because it would be unusual; correct?

MR. MICHALIK: Objection, form.

MR. FANGMAN: Objection, calls for deliberative process privilege, and I'm directing

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1 Ms. Giancola not to answer.

2 MR. OBERTS: Objection, form, speculation,
3 and foundation.

4 THE WITNESS: I will follow his advice.

5 BY MS. WEST:

6 Q. Let me reask it in a different way.

7 It's possible that you can't answer my
8 question about not prosecuting a case where an
9 identification was made more than 11 years after it
10 happened -- after the crime happened because you
11 never did; right?

12 MR. MICHALIK: Object to form, argumentative.

13 MR. OBERTS: Object to foundation,
14 speculation, and to the extent asked and answered.

15 THE WITNESS: You're asking me to
16 speculate whether I did or I didn't. The way I
17 answered it is the way I would answer it again.

18 BY MR. STARR:

19 Q. And you previously said that you cannot
20 identify a case that you prosecuted 11 years after
21 the crime when an identification is made after 11
22 years; correct?

23 MS. WEST: Objection. Misstates her prior
24 testimony.

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1 THE WITNESS: I said that because that
2 would require me to recall the specific time frames
3 of each identification of every case I've ever
4 touched.

5 BY MR. STARR:

6 Q. Can you recall any specific time frames of
7 any cases that you've prosecuted how long after an
8 identification was made after a crime occurred?

9 MR. OBERTS: Objection, overbroad,
10 speculation, foundation, and vague.

11 THE WITNESS: I don't understand.

12 BY MR. STARR:

13 Q. Can you recall with any specificity what
14 the longest time elapsed in any case you've
15 prosecuted from when a crime occurred to when an
16 identification occurred?

17 MR. OBERTS: Objection, overbroad, time
18 frame/scope, foundation, speculation, vague, and
19 form.

20 THE WITNESS: No, and it would be the same
21 reason, because I don't recall with certainty all
22 the cases I've ever touched the time frame in
23 between crime and identification.

24 MR. STARR: No further questions. Thank

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1 you for your time.

2 MS. WEST: I don't have anything else.

3 MR. OBERTS: We will reserve.

4 MS. WEST: Thank you very much for your
5 time.

6 (FURTHER DEPONENT SAITH NAUGHT...)

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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF COOK)

4 I, Sharon L. Patanella, Certified
5 Shorthand Reporter, do hereby certify that on
6 September 19, 2024, the deposition of the witness,
7 TONI GIANCOLA, called by the Defendants, was taken
8 before me via videoconference, reported
9 stenographically, and was thereafter reduced to
10 typewriting under my direction.

11 The said deposition was taken via
12 videoconference, and there were present counsel,
13 all via videoconference, as previously set forth.

14 The said witness, TONI GIANCOLA, was first
15 duly sworn to tell the truth, the whole truth, and
16 nothing but the truth, and was then examined upon
17 oral interrogatories.

18 I further certify that the foregoing is a
19 true, accurate, and complete record of the
20 questions asked of and answers made by the said
21 witness, TONI GIANCOLA, on the date and time
22 hereinabove referred to.

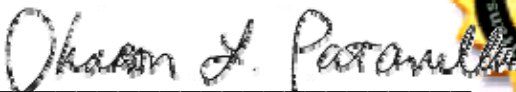
23 The signature of the witness, TONI
24 GIANCOLA, was waived by agreement of counsel.

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1 I further certify that I am not a relative
2 or employee or attorney or counsel of any of the
3 parties, or a relative or employee of such attorney
4 or counsel, or financially interested directly or
5 indirectly in this action.

6 Witness my official signature as a
7 Certified Shorthand Reporter in the State of
8 Illinois on October 9th, 2024.

9
10 
11 SHARON L. PATANELLA, CSR
12 161 North Clark Street
13 Suite 3050
Chicago, Illinois 60601
Phone: 312.361.8851



14 CSR No. 84-002169
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SIGNATURE PAGE

I, TONI GIANCOLA, have read the following transcript of my deposition taken on September 19, 2024, and, except for any corrections noted on the attached errata page(s), it is a true and correct transcript of my deposition given on the date aforesaid.

TONI GIANCOLA

SUBSCRIBED AND SWORN TO

Before me this ____ day of
_____ A.D, 2024.

Notary Public

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